

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JEFFREY J. DUBSKY,

Plaintiff,

v.

**MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,**

Defendant.

CASE NO. 4:08CV3057

**MEMORANDUM AND ORDER
REVERSING AND REMANDING FOR
FURTHER PROCEEDINGS**

This matter is before the Court on the Defendant's Motion to Remand. Defendant asks the Court to reverse the decision of the administrative law judge (ALJ) (see Filing No. 20), and remand this action to Defendant pursuant to sentence four of Section 205(g), 42 U.S.C. § 405(g). The Plaintiff has not objected to the motion.

In support of the motion, Defendant states that agency counsel has requested that the Appeals Council reconsider the case, which it agreed to do. Upon its review, the Appeals Council determined that a remand for additional proceedings before the ALJ was appropriate. On remand, the Appeals Council will direct the ALJ to obtain additional evidence from a medical expert regarding the nature, course, and severity of Plaintiff's mental impairments, including the effect of substance abuse, and to further consider Plaintiff's physical and mental residual functional capacity. Subsequently, the ALJ will render a new decision that specifically considers this new evidence.

The necessity for remand was not discovered until this case was reviewed by Defendant's legal counsel for briefing. The Court finds that remand would expedite

administrative review and may make judicial review unnecessary.¹ The Court will remand pursuant to sentence four of 42 U.S.C. § 405(g), which provides:

The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner, with or without remanding the cause for a rehearing.

For all these reasons,

IT IS ORDERED:

1. The Defendant's Motion to Remand (Filing No. 20) is granted;
2. The matter is reversed and remanded;
3. The matter is remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this Memorandum and Order; and
4. A separate judgment will be filed.

DATED this 2nd day of February, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

¹ This Court recognizes that "[o]rdinarily, when a claimant appeals from the Commissioner's denial of benefits and we find that such a denial was improper, we, out of 'our abundant deference to the ALJ,' remand the case for further administrative proceedings." *Buckner v. Apfel*, 213 F.3d 1006, 1011 (8th Cir. 2000) (*citing Cox v. Apfel*, 160 F.3d 1203, 1210 (8th Cir. 1998)).